IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5429/2004
(Devi Lal Vs. The Workmen Compensation Commissioner, Rajsamand & Ors.)

Date of Order : 15/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. B.R.Mehta for the petitioner.
Mr. R.K.Soni for the respondents No.2 and 3.

BY THE COURT:-

By the instant writ petition under Article 226 & 227 of the Constitution of India, the petitioner seeks quashing of orders dated 3.12.2002 and 31.12.2003 so also award dated 09.5.2003 passed by the respondent No.1.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the respondents No.2 and 3 filed a claim petition before the respondent No.1 the Workmen's Compensation Commissioner, Rajsamand (for short 'the Commissioner' hereinafter) for awarding compensation on the ground that son of the claimants namely Kailash was working in the factory of the petitioner. The petitioner was doing business of

making Ice-cream. While, the workman was making ice-cream in the factory of the petitioner, he received an electric shock and died due to electrocution. The Commissioner issued notice to the petitioner employer. The notice was also sent by registered AD post on the registered address of the petitioner. The registered notice along with the AD did not return back for a period of one month from the date of its dispatch and therefore, the Commissioner drawn the presumption of notice having been served under proviso to Rule 19-A (2) of Order 5 of the Code of Civil Procedure, 1908, proceeded ex-parte against the petitioner and passed the award Annex.3 dated 09.5.2003 in favour of the claimants and against the petitioner directing the petitioner to pay compensation along with interest, penalty and funeral expenses. The petitioner employer filed an application before the Commissioner for setting aside the ex-parte award which came to be dismissed vide order Annex.4 dated 31.12.2003. Hence this petition.

It is contended by learned counsel for the petitioner employer that the notice of the claim petition filed by the respondents No.2 and 3 has not been served on the petitioner and therefore, the Commissioner fell in error in proceeding ex-parte against the petitioner as also passing the ex-parte award Annex.3. The learned counsel further submits that the order dismissing the application filed by the petitioner under Order 9

Rule 13 CPC is revisable under Section 115 CPC, but since the Commissioner being not a subordinate Court to the High Court for the purpose of Section 115 CPC, therefore, the writ petition is maintainable. He has relied on a Division Bench decision of this Court in Bashir Khan Vs. Ranger, Social Vaniki and Ors, RLW 1994 (2) Raj. 586. In that case, the order passed by the Workmen's Compensation Commissioner was challenged by way of filing a civil revision. The Division Bench of this Court has treated the revision as writ petition under Article 227 of the Constitution of India in order to do the complete justice between the parties.

Counsel appearing for the respondents No.2 and 3 submits that the writ petition is not maintainable as the final award passed by the Commissioner is appealable under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the W.C. Act' hereinafter). He has relied on a decision of this Court in Vikram Singh Verma Vs. Smt. Kashmiri Devi and Ors. 1999 DNJ (Raj.) 712.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

From the order sheets of the Commissioner Annex.2 it appears that the claim was filed on 19.10.2000 by the respondents No.2 and 3 for compensation under the provisions of the W.C. Act against the petitioner employer. From the order

sheets of the Commissioner dated 28.6.2002, 5.8.2002 and 10.9.2002 that the notices sent to the petitioner on the address mentioned in claim application i.e. Bharoli, Tehsil Roshni, District Chittorgarh were received unserved and therefore, the respondents were directed to file the correct address. The respondent sought the notice to be served on the petitioner at his Ice-cream Factory at Surat, Gujarat. It appears that when the notices were received unserved through process, the notices were sent by registered post to the petitioner on the address of his factory at Surat. The notice sent to the petitioner by registered post AD was not received back by the Commissioner and therefore, by order dated 3.12.2002, the Commissioner drawn a presumption of notice having been served under proviso to Rule 19-A (2) of Order 5 of the Code of Civil Procedure, 1908, proceeded ex-parte against the petitioner, recorded the evidence of the respondents No.2 and 3 and passed the award Annex.3 dated 09.5.2003. The petitioner moved an application under Order 9 Rule 13 CPC seeking setting aside the ex-parte order on the ground that he has not received any notice and one Devi Lal S/o Madhu Lal gave him an envelope containing the order of ex-parte decree. Learned Commissioner held that a notice by registered post was sent to the petitioner on his registered address at Surat and it has not returned undelivered for a period of one month and therefore, drawn the presumption of

service of notice and held that the contention of the petitioner that no notice was served on him cannot be accepted for the reason that after making award, copy of award granting compensation was also sent to the petitioner on his address at Suraj which according to the petitioner has been received by him through his employee Devi Lal S/o Madhulal. There are evidence before the Commissioner that the registered notice was sent to the petitioner at his registered address. Even according to the petitioner he received an envelope from one Devilal S/o Madhulal Gadri on 25.6.2003 by which he acquired the knowledge about ex-parte decree. Having considered the facts and circumstances of the case available on record, the Commissioner held that the notice was sent to the petitioner on his registered address by registered post and has been served as the same has not been returned undelivered within 30 days from the date of its dispatch and declined to set aside the ex-parte decree. The Commissioner also held that a notice was also sent on the registered address of the petitioner at Surat after passing ex-parte decree directing the petitioner to deposit the compensation amount awarded which was received by the petitioner. This shows that the earlier notice which was sent to him on same address i.e. address of his Ice-cream Factory at Surat, has also been served on the petitioner. The petitioner has not disputed his registered address. Thus, the notice of the proceeding before the learned

Commissioner has been found to have been served on the petitioner.

In my view, the conclusion arrived at by the learned Commissioner that the notice was served on the petitioner and the petitioner failed to file written statement and contest the claim filed by the respondents No.2 and 3, cannot be said to be erroneous in any manner.

Section 30 of the W.C. Act reads as under :-

> "30. Appeals.- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-
> (a) an order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
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> (aa) an order awarding interest or penalty under Section 4A;
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> (b) an order refusing to allow redemption of a half-monthly payment;
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> (c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent;
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> (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12; or
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> (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions;
>
> Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three

thousand rupees;

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

[provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against]

(2) The period of limitation for an appeal under this Section shall be sixty days.

(3) The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963), shall be applicable to appeals under this Section."

Thus, from the plain reading of the provisions of Section 30 of the W.C. Act it is clear that an order awarding a lump sum compensation, interest or penalty is appealable to the High Court. The statutory remedy of appeal is provided against the order of the respondent No.1 passing an award granting lump sum compensation to the respondents No. 2 and 3.

In Praveen Industries and Ors. Vs. Shri Banwar Singh II (1990 ACC 108), a Division Bench of Karnataka High Court held as under :-

"The only provision regarding appeal against the orders made by the Workmen's Compensation Authority is found in Section 30 of the Workmen's Compensation Act. Under Cl. (a) of Section 30 (1) an appeal lies to this Court from the orders of the Commissioner awarding compensation. Therefore, it is

> clear that if an order awarding compensation has been made by the Workmen's Compensation Authority and thereafter an application was made u/o IX, R. 13 praying for setting aside that order on the ground that the appellant had been placed ex-parte without jurisdiction and that application is dismissed, the only course open to the party is to prefer an appeal against the order awarding compensation as provided in Sec. 30 (1) (a) of the Act. But no appeal can be filed against an order dismissing the application for setting aside the order as there is no provision for filing such appeal u/s 30 of the Act and u/R. 41, the provisions of O.43 R.1 CPC are not made applicable."

Keeping in view the decision of Division Bench of Karnataka High Court in Praveen Industries and Ors. Vs. Shri Banwar Singh (supra), in my view an alternative and efficacious remedy by way of a statutory appeal is available to the petitioner and therefore, the instant writ petition is not maintainable.

In this view of the matter, the writ petition stands dismissed as not maintainable. However, it is open for the petitioner to file an appeal challenging the final award made by the Commissioner if so advised with an application seeking condonation of delay. There shall be no order as to costs.

(H.R.PANWAR),J.

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